

**STATE OF KANSAS**  
**OFFICE OF THE SECURITIES COMMISSIONER**

**REQUEST FOR PUBLIC COMMENT: REGISTRATION EXEMPTIONS FOR**  
**INVESTMENT ADVISERS TO PRIVATE FUNDS**

The Office of the Kansas Securities Commissioner (“KSC”) seeks public comment on potential regulatory changes contemplated by enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Act”).

Among many other reforms, the Act requires advisers to private funds (a/k/a “hedge funds”) with over \$150 million in assets under management (“AUM”) to register with the Securities and Exchange Commission (“SEC”). However, the Act left to the states the regulation of investment advisers to private funds with under \$150 million in AUM. Without amendment to current Kansas regulations, these advisers must register with KSC on July 21, 2011, the effective date of the Act.

Though KSC takes very seriously its historical role in protecting small, retail investors from unethical practices and fraud, we understand that current law, with some exceptions, prevents small investor participation in private fund offerings. Further, the adviser regulatory regime designed to protect small investors may not adequately accommodate the legitimate, value-generating business models of private funds. Therefore, KSC is considering an exemption for private fund advisers that would maintain investor protections, reduce regulatory burden, and encourage capital formation and investment.

With respect to private fund advisers, the Act becomes effective July 21, 2011; however, submission of public comment at this early stage will assist KSC in creating sound, reasonable policy in a timely manner. Though KSC seeks comment with respect to the matters listed below,

this request is not the final opportunity for public comment. After KSC drafts and publishes in the Kansas Register a proposed rule, the public will have additional opportunity for comment.

KSC appreciates public comment on one or all of the following, as the commentator's knowledge, expertise and experience permit:

1. What is the extent of private fund activity in Kansas currently, with funds of any size and both within and outside of banks, and what types of investment strategies do they typically pursue?
2. Should KSC adopt the same or different rules with regard to advisers to funds formed pursuant to Section 3(c)(1) of the Investment Company Act of 1940 (the "ICA") and those formed pursuant to Section 3(c)(7) of the ICA? What are the consumer protection consequences of regulating advisers to these funds in the same manner?
3. The Act exempts from SEC registration advisers to a "venture capital fund," though it does require these advisers to follow SEC recordkeeping and reporting requirements. Though the SEC is yet to define "venture capital fund," what policy changes, if any, should KSC consider with regard to registration or regulation of advisers to venture capital funds?
4. Should KSC adopt rules or provide exemptions with regard to advisers to funds formed pursuant to Section 3(c)(5) of the ICA?
5. Requiring advisers to private funds to provide yearly audited financial statements of the fund to investors reduces the possibility of fraud. What are the advantages and disadvantages of requiring a private fund adviser, as a condition of their registration exemption, to provide to investors the private fund's yearly audited financial statements?
6. Should KSC apply current adviser bonding requirements to advisers to private funds?

7. What are the typical qualifications of advisers to Kansas-based private funds? Should KSC require certain minimal examinations and expertise for private fund advisers?
8. Recent changes to financial institution affiliate transaction rules prohibit banks from certain private fund transactions and management arrangements. Will banks with these types of operations spin off their advisory personnel, and if so, to what extent are the needs of these fund advisers different than that of other private fund advisers?
9. Government funds available for borrowing by Small Business Investment Companies (“SBICs”) are subject to unpredictable congressional appropriation and increasing regulatory scrutiny. Might some SBIC’s choose to forgo SBIC regulation and convert to a state-sponsored regime if one were available? If so, what characteristics of a state-sponsored regime might be attractive to an SBIC?
10. What other factors should KSC consider in drafting exemptions or rules for advisers to private funds under state jurisdiction, or generally in response to the Act to enhance and improve capital formation and the Kansas economy?

Please include in your comments a description of your knowledge, expertise and experience in these matters, as well as your contact information. Please place your comment in a PDF or Microsoft Word document and e-mail to [ksc@ksc.ks.gov](mailto:ksc@ksc.ks.gov) or mail to the Office of the Kansas Securities Commissioner, attn: Private Fund Adviser Comments, 109 SW 9<sup>th</sup> Street, Ste. 600, Topeka, KS 66612. If you e-mail, please also include the text of the comment in the body of the e-mail. Comments should be received by close of business December 17, 2010.

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Kansas Securities Commissioner